IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28-12-2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
&
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

CRIMINAL APPEAL NO.126 OF 2002

Murugan ... Appellant/Accused

Vs.

State by
Inspector of Police,
J-7,Velacherry Police Station,
Chennai. ... Respondent/Complainant.
(Cr.No.1526/98)

Criminal Appeal preferred under Section 374(2) Criminal Procedure Code for the relief as stated therein.

For appellant: : Mr.K.Selvakumarasamy
For respondent: Mr.E.Raja, Addl.P.P.

JUDGMENT:-

V.KANAGARAJ,J.,

This criminal appeal is directed against the conviction and sentence passed by the Court of VII Additional Sessions Judge, Chennai dated 28.9.2001 in S.C.No.34 of 2000 thereby convicting the appellant for the commission of offences punishable under Section 302 I.P.C. and sentencing him to undergo rigourous imprisonment for life besides imposition of a fine of Rs.1000/- in default to undergo a further Rigourous Imprisonment for three months.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, it comes to be known that the appellant is the accused and he has been charged for the commission of the offence punishable under Section 302 I.P.C.

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3. The case of the prosecution is that the appellant was having illicit intimacy with one Shanti,Daughter-in-law of P.W.3, who is the maternal uncle of the appellant; that this was exposed by the deceased. P.W.3 told the accused that he should not pay visits to his house and therefore the appellant developed a grudge against the deceased; that while so on 08.09.1998 at about 7.30 p.m. the accused came to the house of the deceased and called him out; that the deceased came down and was talking with the accused; that after some time both of them were found at the place of occurrence that P.W.1 and P.W.2 growing suspicions went in search of the deceased and when they went to the place of occurrence, they saw the accused and the deceased still talking to each other; that according to the prosecution during the course of altercation the appellant suddenly took the M.O.1 knife and cut the deceased and ran away and that the deceased died on the spot and hence the charge.

4. Thereupon, the Court of VII Additional Sessions Judge, Chennai, having framed the charge against the accused and since he pleaded not guilty of the offence charged, conducted the trial into the charges with due opportunity for the prosecution and defence as well, to exhaust their remedies during which on the part of the prosecution whose burden it is to prove the charges beyond all reasonable doubts, as warranted under law, 11 witnesses have been examined as P.Ws 1 to 11 for oral evidence and have also marked 20 documents as Exhibits P.1 to P.20 for documentary evidence further marking 9 material objects as M.Os.1 to 9. On the part of the defence, one witness has been examined as D.W.1 for oral evidence with no documentary evidence adduced on their part.

5. In consideration of the above evidence placed on record and in appreciation of the same the Court of VII Additional Sessions Judge, Chennai, has found the appellant guilty of the offence under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo Rigourous Imprisonment for a further term of three months and it is only challenging the said conviction and sentence, the appellant/convict has come forward to prefer the above appeal.

6. Heard the learned counsel appearing on behalf of the appellant/accused, the learned Addition Public Prosecutor appearing for the State as well.

7. During arguments the learned counsel for the appellant would submit that as per the case of the prosecution on 08.09.1998 at about 7.30 p.m. the appellant came to the house of the deceased and called him out; that the deceased came down

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and he was talking with the accused; that after some time both of them were found at the place of occurrence; that P.W.1 and P.W.2 went in search of the deceased in the house; that when they went to the place of occurrence, they saw the accused and the deceased still engaged in wordy altercation and according to the prosecution the appellant suddenly took the M.O.1 knife and cut the deceased and ran away and that the deceased died on the spot; that P.W.1 went to the police station and gave Exhibit P-1 complaint to P.W.11 Inspector of Police and that the Inspector of Police registered the case in Crime No.1526 of 1998 and took up the investigation; that he went to the place of occurrence and prepared Ex.P.2 and Ex.P.3; that he also took photographs with the help of P.W.7; that during the course of investigation, he collected samples of Blood stained earth and sample earth(M.O.6 & M.O.7) under the cover of Exhibit P-4 Mahazar then he sent them for chemical analysis; that on the same day, he conducted inquest in the presence of of the panchayatars and prepared Exhibit P-17 inquest report; that he sent the body of the deceased to Postmortem with the Ex.P-8 requisition; that during the inquest he examined three witnesses namely Jayachandran, Revathy and Angammal; that on 9.9.1998 he examined four witnesses namely Dhanakodi, Shanthi, Purushothaman,and Rajendran; that on the same day, he arrested the appellant nearby Vijay Nagar Bus Stand at about 1.30 p.m.; that the appellant gave a confession the admissible portion of which is Exhibit P-18; that he recovered M.O.1 knife used in the crime at about 17.30 hours; under Mahazar Exhibit P-19 and M.O.8 shirt worn by the appellant under Exhibit P-20 at about 11.30 a.m.; that then he recovered Exhibit M.O.9 blood stained lungi worn by the appellant under Form No.95. On 10.9.1998 he sent are requisition for post mortem and recorded the statement of doctor P.W.8 and then he sent the accused to the Judicial custody; Then P.W.11 on completion of the investigation laid the charge sheet against the appellant under Section 302 I.P.C.

8. The learned counsel for the appellant would further submit that the incident looks very artificial and against the human conduct and the place of occurrence is three kilo metres away from the house of P.Ws1 and 2 and hence they could not have seen the occurrence at all; that the evidence of D.W.1 is more natural and believable than the evidence of P.W.1 and P.W.2 who are the eye witnesses; P.W.3 is the motive witness; P.W4 is the watchman who speaks about the light availability; P.W.5 is the witness for the Observation Mahazaar and he gives a different place of occurrence. P.W.7 is the Photographer; P.W.8 is the port mortem Doctor; P.W.9 Police Constable who took the body to post mortem; P.W.10 is the property clerk who received the property in the Court of Saidapet and P.W. 11 is the Inspector of Police. The learned counsel for the appellant would further submit that at any event the sentence passed by the learned VII Additional Sessions Judge is excessive. The learned counsel

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would also cite the following judgements in favour of the case of the appellant, which are respectively as follows:

(i) Hazari Lal Vs. The State (Delhi Admn.) (1980 Crl.L.J.564);

(ii) Khima Vikamshi & others Vs. State of Gujarat (2003 (2) Crl.L.J.2025);

(iii) Ram Mohan Mazumdar Vs. Ram Krishna Dass & another (A.I.R.1980 Supreme Court 872)

9. In the first judgement cited above, it has been held:

> "Statements made by witnesses in the course of investigation cannot be used as substantive evidence. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by Section 145 of the Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo in the course of an investigation relates to the statements falling within the provisions of Section 32 (1) of the Evidence Act or permitted to be proved under Section 27 of the Evidence Act. The definition of 'proved' in Section 3 of the Evidence Act does not enable Court to take into consideration matters, including statements, whose use is statutorily barred."

10. In the second judgement cited above, it is held by the Honourable Apex Court:

> "P.W.4 has admitted that she is a Pardanashin lady, her accompanying the deceased alone at the time of incident itself is a doubtful circumstance; moreso in the background of the fact that her

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husband and mother-in-law were available in the house when she left the house for Dwarka, and the prosecution has not come out with any explanation as to why any one of them did not accompany her to Dwarka. Then again her statement that she saw the accused persons for the first time when they started assaulting the deceased, is also highly unnatural because from the topography of the place of incident, it is clear that the area in question was a flat land with visibility to a considerably long distance, hence, if really P.W.4 was present at the time of the incident, she would have noticed the accused persons much earlier than when they started assaulting the victim."

11. In the third judgement cited above, it is held out by the Supreme Court:

"that the prosecution though has been able to establish some of the links of the chain of circumstances, it has failed to establish some of the vital links beyond all reasonable doubts. Therefore, the High Court was justified in coming to the conclusion that the chain of circumstances in this case is not complete."

12. On such arguments, the learned counsel for the appellant would pray to allow the above criminal appeal, setting aside the convicting judgement of the trial court.

13. On the contrary, on the part of the learned Additional Public Prosecutor representing the State would argue to the effect that P.Ws 1 and 2 have deposed as eye-witnesses and their evidence is natural and consistent; that there is no delay in lodging of Exhibit P-16 compliant; that the conduct of the witnesses, their demeanour etc., have been fully analysed by the trial court so as to arrive at a valid conclusion from out of such analytical approach; that the direct evidence of P.Ws 1 and 2 does not in any manner become tainted and since being reliable, the trial court has given credence to the same in its decision arrived at; moreover the medical evidence and the evidence of the Investigating Officer support the case of the prosecution in a more reliable manner. At this juncture the learned Additional Public Prosecutor would cite a judgement of

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he Honourable Apex Court reported in HAZARI LAL Vs. The State (Delhi Administration) (AIR 1980 Supreme Court 873), wherein it is held:

> "There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case, a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally in facts and circumstances of another case the Court may unhesitatingly accept the evidence of such an Officer. It is all a matter of appreciation of evidence and on such matters, there can be no hard and fast rule, nor can there be any prudential guidance."

14. Citing the above judgement the learned Additional Public Prosecutor would exhort that the Honourable Apex Court has held in the said judgement that if the evidence of the Investigating Officer is reliable and encouraging, based on such evidence alone the conviction could sustain and no corroborative evidence need be expected by the Court. On such arguments, the learned Additional Public Prosecutor would ultimately pray to dismiss the above criminal appeal confirming the judgement of the trial court.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the appellant and the learned Additional Public Prosecutor representing the respondent State as well what could be assessed by this Court is that it is a case of murder that took place on 8.9.1998 at about 7.30 p.m. The appellant herein with such intention and motive and to commit the murder of the deceased one Devendran took him from his residence to the place of occurrence and stabbing him with knife on his neck, right shoulder, on the back of the head and on his wrist indiscriminately caused the death of the said Devendran instantaneously and hence the appellant was charged for the commission of the offence punishable under Section 302 of Indian Penal Code.

16. The prosecution whose burden is to prove its charge beyond all reasonable doubts as it is required under law, has examined 11 witnesses for oral evidence, marked 20 documents for documentary evidence further marking 9 material objects in

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proof of the case of the prosecution and in appreciation of these evidence placed on record, the trial court has arrived at the conclusion that the prosecution has brought home the guilt of the accused and therefore has further convicted and sentenced the sole accused in the case, who is the appellant herein with imprisonment for life and with imposition of a fine of Rs.1000/- in default to undergo a further rigourous imprisonment for 3 months. It is this conviction and sentence of the appellant, is under challenge in the above appeal.

17. Out of the 11 witnesses examined as P.Ws 1 to P.W.11 in favour of the case of the prosecution, P.Ws 1 and 2 have been examined as eye-witnesses; P.W.3 as the witness for the proof of motive; P.W.4 for circumstantial evidence; P.Ws 5 and 6 as mahazar witnesses for the preparation of Exhibits P-2 to P-4 seizure mahazars, out of whom P.W.6 would be declared a hostile witness; P.W.7 is the photographer who took the photographs at the place of occurrence; P.W.8 is the post mortem Doctor who conducted autopsy on the body of the deceased and issued Exhibit P-6 post mortem certificate; P.W.9 is the corpse constable through whom M.Os 2 and 3 would be recovered; P.W.10 is the court clerk through whom M.Os 1 and 2 have been recovered and sent for the chemical analysis along with Exhibit P-13 Form and Exhibit P-14 letter of the Magistrate and this witness would obtain from the Chemical Analysis Centre, Exhibit P-15 report; P.W.11 is the Inspector of Police and the Investigating Officer who would speak aboout right from the receipt of the F.I.R. and all about the investigation, collection of evidence, examination of witnesses recording of the statement, arrest of the accused and making such arrangements sending the body for post mortem and M.Os. for chemical analysis report to be obtained and on completion of the investigation would file the charge sheet against the appellant for the offence punishable under Section 302 I.P.C.

18. In the whole of the process of the prosecution evidence P.Ws 1 and 2 have been examined as eye-witnesses. It is relevant to consider whether the evidence of these two eye-witnesses who are admittedly closely related to the deceased would require corroboration since the evidence of these witnesses is interested testimony particularly in view of the fact that on the part of the defence certain doubts were raised regarding the feasibility for these witnesses to witness the occurrence. Firstly, it would be argued that the distance between the place of residence of the deceased from where he was taken by the appellant to the place of occurrence is 3 kilo meters and it is not reliable or artificial to say that P.Ws 1 and 2 followed the deceased and the appellant to such a long distance so as to witness the occurrence, the distance of 3 kilo meters fixed on the part of the defence is factually wrong

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in view of the fact that in the cross examination P.W.1 has not only denied the distance for the question put by the learned counsel for the defence to the effect that the distance is 5 kilo meters from the place of the residence of the deceased and the place of occurrence but has also stated that the occurrence took place in the next street to the place of residence of the deceased and therefore factually it is not established whether the distance is 3 kilo meters or 5 kilo meters and therefore based on such hypothetical question, no doubts could be entertained at regarding the feasibility for P.Ws 1 and 2 to witness the occurrence.

19. Secondly, that no attempt was made by P.Ws 1 and 2 to rescue the deceased from the hands of the appellant since there was absolutely no participation for these two witnesses in the whole of the occurrence. So far as this point is concerned, it is the definite evidence of P.Ws. 1 and 2 that growing suspicious about the appellant taking the deceased along with him and since they were not seen nearby the residence P.Ws 1 and 2 started searching for them and while they reached the place of occurrence which is just in the next street in a vacant site near Alakrity Apartments they were engaged in a wordy altercation when all of a sudden the appellant took the knife from behind his back and started assaulting the deceased causing injuries on the neck, shoulder, hands, legs and head etc., and on seeing the P.Ws 1 and 2 the appellant run away from the scene of occurrence and therefore natural evidence has been adduced on the part of P.Ws 1 and 2 eye-witnesses and in fact P.W.1 would also identify M.O.1 knife, M.O.2 shirt, and M.O.3 lunghi worn by the deceased at the time of occurrence and it could also be said that from the evidence of these two witnesses there is no major contradictions and therefore there is no reason as to why such valuable evidence adduced on the part of P.W.2 should be rejected and therefore there is much reason for the trial court relying on the evidence of these two witnesses to sustain the conviction against the appellant.

20. Furthermore, it is a case of single accused whether regarding the motive which is very strong that the appellant was having illicit intimacy with one Shanthi daughter-in-law of P.W.3 and this was questioned by the deceased with the appellant as a result of which, the appellant had a grudge against him and on such strong motive with intention to commit the murder of the deceased and with full knowledge and with all preparations, the appellant had perpetrated the murder of the deceased. In the process of adducing evidence P.W.3 would serve as the motive witness, P.W.5 would serve as the mahazar witness for the preparation of the observation mahazar and rough sketch

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on the spot and since P.W.6 who also speaks to the same facts himself turning hostile is not affecting the case of the prosecution in any manner.

21. Coming to the vital part of circumstantial evidence, the post mortem Doctor who issued Exhibit P-6 post mortem certificate on examination of the dead body of the deceased conducting post mortem and this witness would account for the injuries found on the body of the deceased which would correlate with those description given by the eye witnesses as to on which parts of the body the appellant stabbed the deceased. This medical witness would also offer his opinion accounting for a total of 10 injuries and would offer his opinion that the deceased would appear to have died of multiple injuries caused by the weapon M.O.1 shown to him. This witness would further opine that the injuries noted by him on the body of the deceased could have been caused by a weapon of the sort of M.O.1.

22. The next vital circumstantial evidence is supplied by the evidence of the Investigating Officer from which it comes to be seen that pursuant to the admissible portion of the confession statement of the accused on his arrest as seen from Exhibit P-18 the recovery of the weapon of offence M.O.1 would be recovered as seen from the Mahazar i.e., Exhibit P-19 and this recovery pursuant to the confession of the appellant leading to the recovery of M.O.1 is no less important evidence in a case of such nature and therefore in appreciation of these evidence and on an overall consideration the entire case of the prosecution as projected before the trial court, the trial Judge is able to arrive at his unshakeable decision to convict the accused for the commission of the offence punishable under Section 302 I.P.C. in causing the murder of the deceased at the place, time and in the manner alleged in the charge and hence this court is not able to see any infirmity or inconsistency either factually or legally nor any other ills affecting the case of the prosecution and therefore it has to be spelt out that this Court could see no reason to cause its interference into the well considered and merited manner in which the case has been dealt with and the conclusion has been arrived at by the trial court so as to convict the appellant for the cause of murder of the deceased and sentence him to undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo a further rigourous imprisonment for a term of 3 months and hence the following judgement.

In result,

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(i) For all the discussions held supra, the above criminal appeal fails and the same becomes liable to be dismissed and is dismissed accordingly; and

(ii) the judgement of the Court of VII Additional Sessions Judge, Chennai, dated 28.9.01 rendered in S.C.No.34 of 2000 thereby convicting the appellant for the commission of the offence punishable under Section 302 I.P.C. and sentencing him to undergo rigourous imprisonment for life besides imposing a fine of Rs.1000/- in default to undergo a further rigourous imprisonment of 3 months is hereby confirmed.

28-12-2004

ks

Sd/
Asst.Registrar

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Sub Asst.Registrar

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1. The VII Addl. Sessions Judge,
   Chennai

2. -do- Through The Prl. Sessions Judge,Chennai.

3. The Superintendent,
   Central Prison, Vellore.

4. The Inspector of Police,
   J-7, Velacherry Police Station,
   Chennai.

5. The District Collector,
   Chennai.

6. The Director General of Police,
   Chennai.

7. The Public Prosecutor,
   Chennai.

Cp (co)
dv

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